



**CALIFORNIA
ENERGY
COMMISSION**

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**COMMITTEE ORDERS ON VARIOUS
CARE MOTIONS**

MIRANT DELTA'S CONTRA COSTA POWER PROJECT,
APPLICATION FOR CERTIFICATION, DOCKET NO. 00-AFC-1

Recently, Intervenor Californians for Renewable Energy, Inc. (CARE), has filed a number of motions and other papers. The Committee has consolidated its review of these filings and issues the following ORDERS:

1. On April 2, 2001, Intervenor Californians for Renewable Energy, Inc. (CARE), filed its *Motion to Deny Certification for the Contra Costa Power Project for BAAQMD's Loss of Permitting Authority*.

This Motion requests the Committee deny certification on the assertion that the Bay Area Air Quality Management District (BAAQMD) has lost authority to grant permits since the federal Environmental Protection Agency (EPA) has disapproved in part the BAAQMD's Ozone Attainment Plan.

Applicant, Mirant Delta, filed its *Opposition to CARE's Motion to Deny the Application for Certification* on May 10, 2001. Mirant acknowledges that EPA has designated the Bay Area as non-attainment for ozone and the August 1999 revision of the State Implementation Plan (SIP) was approved in part and disapproved in other parts by EPA on March 21, 2001. However, Mirant claims that the Clean Air Act provisions allow the BAAQMD to continue to grant permits while the disapproved parts of the SIP are revised and reviewed. Mirant asserts that only if the SIP remains disapproved by EPA will either sanctions be imposed or permitting authority curtailed. Therefore, given the pendency of the revision of the SIP, Mirant asserts that BAAQMD continues to have the authority to permit the Contra Costa Unit 8 Project.

ORDER: The Committee has reviewed the status of the SIP revision and the applicable provisions of the federal Clean Air Act. The Committee concurs with Mirant's position that BAAQMD has the authority to permit the Contra Costa Unit 8 Project since the SIP revision is pending.

2. On May 3, 2001, Intervenor Californians for Renewable Energy, Inc. (CARE), filed its *Motion to Reopen the Administrative Record to Fully and Fairly Search for, Identify, Analyze, Evaluate, and Publicly Disclose all Changed Facts & Circumstances stemming from the Recent, Current, and Ongoing Events involving the "Energy Crisis."*

This Motion asks the Committee to reopen the evidentiary record to determine whether there are changes arising from the energy crisis which affect the review of the potential environmental or community impacts of the proposed project and any mitigation measures to address them.

CARE does not enumerate possible "changes arising from the energy crisis" to be considered if the record were reopened. All relevant information was considered by the Committee, leading to a proposed project whose potential impacts have been mitigated to a level of insignificance. The Committee's reasoning and the facts that support it are contained in the Presiding Member's Proposed Decision. CARE does not specify how the review in the Presiding Member's Proposed Decision is either deficient or how the reopening of the record would enhance it.

This proceeding is not subject to any of the Governor's Executive Orders arising from the declared electricity supply emergency. All of the public participation-oriented procedures of the Warren-Alquist Act and substantive requirements of the California Environmental Quality Act (CEQA) have been fully carried out.

ORDER: CARE has not made a sufficient showing to reopen the record.

3. On May 16, 2001, Intervenor Californians for Renewable Energy, Inc. (CARE), filed its *Demand that CEC Terminate Expenditure of Public Funds Pending Resolution of the "Energy Crisis."*

CARE's *Demand* is that the CEC cease all activities related to the siting, construction and operation of natural gas power plants in California,

- for which a California Environmental Quality Act (CEQA) review is required, and
- until there has been a substantial stabilization of prices, supplies and other market conditions presently constituting the energy supply emergency.

CARE asserts that the energy crisis "has made it impossible to conduct the type of stable, finite, and accurate review of conditions as they actually exist required by CEQA. The energy crisis has destroyed and continues to destroy the database essential to the identification, evaluation, and mitigation of potentially significant environmental impacts that may occur as a result of a powerplant project." CARE also requests that proceedings on projects already certified be reopened to take into account the "energy crisis."

Following the Governor's declaration of an energy supply emergency, the Governor (through various Executive Orders) and the Legislature (through urgency legislation) have adopted a response to the emergency which includes certification of new power plants. In this aspect, CARE's *Demand* is wholly inconsistent with the State's efforts to address the "energy crisis."

The Contra Costa Unit 8 proceeding pre-dates the Governor's emergency declaration and has fully observed the requirements of CEQA. In fact, due to observance of CEQA requirements, the project has been modified to eliminate or reduce to insignificance potential impacts to neighboring properties.

ORDER: CARE's *Demand* is denied since it is inconsistent with State policy and all CEQA-required analysis has been performed in this proceeding.

Dated: May 25, 2001

**ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION**

_____/s/
WILLIAM J. KEESE
Chairman and Presiding Member
Contra Costa AFC Committee

_____/s/
MICHAL C. MOORE
Commissioner and Associate Member
Contra Costa AFC Committee